MDOT RESPONSE TO DLS ANALYSIS

DLS Budget Analysis Issues

1. Deputy Secretary's Salary (Page 17).

DLS recommends that the deputy secretary's salary be reduced to $120,000 consistent with legislative intent.

MDOT Response: MDOT respectfully does not concur with the DLS recommendation.

Reducing the Deputy Secretary's salary would require MDOT to violate State personnel laws and regulations. Under the authority of State Personnel and Pensions Article, Sections 4-106 and 8-103, and Code of Maryland Regulations 17.04.02.09**,** the Department of Budget and Management (DBM) issued salary guidelines, effective July 1, 2000, that provide, "[1-A.] When an employee is promoted to or within the Executive Pay Plan at an executive salary grade which is the equivalent of two or more grades higher, the employee shall receive a 14 percent increase in annual salary."

Unlike previous Deputy Secretaries of Transportation, James F. Port, Jr.'s salary prior to his appointment as Deputy Secretary was under the State of Maryland Standard Salary Structure ($113,206 per annum - Grade 26, Step 18). When he was promoted to Deputy Secretary on November 1, 2004, he was transferred into the Executive Pay Plan (EEP), with a salary of $129,055 (Grade 9 of the EPP). This salary level was consistent with State Personnel policies in that it constituted a 14 percent increase over his previous salary in the Standard Salary Structure.

On July 1, 2005, Deputy Secretary Ports received a COLA that was granted to all State employees, raising his annual salary to $130,991. He also received a merit pay increase afforded to all EPP employees in accordance with the procedures outlined by the DBM's EPP Merit Increase Guidelines for FY 2006, which increased his current salary to $135,601.

The salary for the last Deputy Secretary under the previous administration was $128,995, effective January 1, 2002. If this salary were adjusted for COLAs and EPP increases since that time, this salary would increase to $136,305 - $704 more than Deputy Secretary Ports. Restricting the Deputy Secretary's salary to $120,000 in FY 2007 would result in a salary at least $16,000 (12%) less than the previous administration's Deputy Secretary, when adjusted for COLAs and EPP increases, and prevent the Deputy Secretary position from receiving COLAs like other State employees and merit increases provided to EPP employees

DLS Budget Analysis Issues, continued

2. Financing of MDOT Headquarters Building (Pages 17-18).

2(A). DLS recommends that MDOT comment on why the financing deal with MEDCO was structured using a land exchange rather than buying the property outright and comment as to when they project completing the land exchange.

MDOT Response:

In 2002, MDOT entered into an agreement with the Maryland Economic Development Corporation (MEDCO) for the financing and construction of a new MDOT Headquarters building. This option was chosen due to time constraints associated with vacating the old MDOT Headquarters building, where the property was being used as the site for the construction of a new parking garage for BWI Thurgood Marshall Airport.

Under the financing plan for the new Headquarters building, the agreement between MEDCO, MDOT, and the developer (also the owner of the property) stipulated that MEDCO/MDOT would exchange comparably valued property for the Headquarters property. MEDCO would hold the title on the new property until the bondholders are satisfied, at which time the title would transfer to MDOT. This method was selected, rather than a direct purchase of the property, because it was anticipated at that time to be an easier and less expensive way to complete the transaction. The exchange was to have been completed by 12/31/2004, or MEDCO/MDOT agreed to pay ground rent to the builder until such time that the transfer was executed, retroactive to 12/31/2004.

Most of the MDOT-owned property under consideration for the land exchange with the builder was to be MAA property, considering that MAA owns a number of properties in the vicinity of the MDOT Headquarters building located near BWI Thurgood Marshall Airport. FAA regulations and the federal process dictate how MAA can transfer and/or release excess land to any non-airport entity. MAA has had very limited experience in the disposal of real property since they have predominately been buyers of land for airport expansion and noise zone protection. Once the federal disposal process was researched, it was determined that, coupled with the State processes, the timeframe would be longer than anticipated, thus adding the need for ground rent until the delayed real estate exchange transaction could be completed.

DLS Budget Analysis Issues, continued

The land disposal process, referred to as an Environmental Assessment (EA), has a very prescribed process beginning with a draft scope of work, which the FAA coordinates with many federal and State review agencies, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and other agencies of the U.S. Department of the Interior. Generally, once these agencies comment on the draft scope of work and the FAA approves it, the EA can proceed over a schedule of approximately 18-24 months.

Due to the considerable time (i.e. several years) required for federally mandated environmental studies and other approval processes before such a land transfer could occur, MEDCO/ MDOT has not yet been successful in completing a land exchange with the developer. When the transfer of real estate to MEDCO is completed, the ground rent payments will close. In FY 2007, MDOT will incur an estimated retroactive ground rent payment of $400,000, an increase of $250,000 over the amount budgeted for ground rent in FY 2006.

2(B). DLS recommends that budget bill language be added prohibiting MDOT from funding projects through MEDCO.

MDOT Response: MDOT respectfully does not concur with the DLS recommendation.

In 2002, MDOT chose to use MEDCO as a financing option due to the need for a timely financing. The deal between MDOT, MEDCO, and the developer was complex and had to be completed quickly to allow MDOT to vacate its headquarters building. The building was slated for demolition to make way for a new parking garage at BWI. If MDOT had not chosen the MEDCO financing option, MDOT would have incurred significant financial penalties for the builder to disengage and then re-engage to complete the construction effort.

MDOT manages its debt program, including nontraditional debt, in a prudent manner. Using innovative financing resources for specific projects frees TTF funds and Consolidated Transportation Bond (CTB) debt capacity for other needs that do not have an alternative revenue source. The Legislature has continually asked MDOT to do more with less and to leverage revenue wherever possible to save CTB and cash for projects where alternative revenues are not available.

DLS Budget Analysis Issues, continued

MDOT has several options at its disposal in developing a financing plan for a capital project. If revenue can be leveraged, MDOT then investigates the best financing tool by looking at several options including available cash, CTB debt within the debt limit and the coverage ratio tests, Certificates of Participation, revenue bonds issued by the Maryland Transportation Authority, or revenue bonds issued by MEDCO.

Furthermore, MDOT has not overused MEDCO as a capital funding option. Of the eight outstanding nontraditional debt issuances, MDOT has financed the following two projects through MEDCO. In addition, the two MEDCO financings received competitive interest rates and high ratings from the bond rating agencies. The interest rates received were competitive with rates for other AA-rated projects with similar maturities.

- MDOT headquarters Building: MEDCO issued $36 million in 2002 with a 20-year maturity. The deal received ratings of AA+ by Standard & Poor's and Aa2 by Moody's. The true interest cost (TIC) is 4.60%.

- MAA Piers A/B Renovation and Construction: In 2003, MEDCO issued $223,660,000 with a 25-year maturity. The deal was rated Aa2 by Moody's and AA- by Fitch; however, insurance by Financial Security Assurance (requested by the buyers) increased the ratings to AAA. The TIC is 4.90%.

MEDCO was chosen for each of these deals because of the complex level of each transaction. The headquarters building needed to be completed in a timely manner to allow construction of the new Daily Garage at BWI to proceed. In addition, the deal included a land exchange and a private developer. The Pier A/B project involved Southwest Airlines, a private entity, and was backed by Southwest Airlines revenues and revenues from other airlines operating at BWI. MEDCO does offer longer potential maturities for deals; however, this flexibility allows a better match between the useful life of the project and the expected annual revenue stream.

MEDCO is a viable financing option that should remain available to MDOT for future capital needs. MDOT has done nothing to suggest that additional oversight or restrictions of its use of one nontraditional debt tool is merited. Finally, the annual nontraditional language added by the legislature already limits MDOT to the projects and financing plan submitted in January. Any new projects, including the financing options, have to be brought to the legislature for their review and comment.

MDOT RESPONSE TO DLS ANALYSIS

Operating Budget Recommended Actions

1. Add the following language (Page 19):

Further provided that the Maryland Department of Transportation may not issue bonds through the Maryland Economic Development Corporation for any project.

MDOT Response: MDOT respectfully does not concur with the DLS recommendation. Please see response to Issue 2(B).

2. Add the following language (Page 19):

Deputy Secretary	**9909**	**~~135,601~~** **120,000**

MDOT Response: MDOT respectfully does not concur with the DLS recommendation. Please see response to Issue 1.

3. Add the following language (Page 19):

Further provided that $15,601 shall be reduced from the deputy secretary's salary in fiscal 2007 and the salary of the deputy secretary shall not exceed $120,000 in fiscal 2007 for any purpose from any source.

MDOT Response: MDOT respectfully does not concur with the DLS recommendation. Please see response to Issue 1.

4. Reduce funds for subscriptions for the department. This provides funding equal to the fiscal 2005 actual level (Page 20). $9,000 SF

MDOT Response: MDOT concurs with a reduction of $6,000, but requests that $3,000 be retained to cover the annual costs of Project Management Institute (PMI) certifications funded through TSO's Office of Transportation Technology Services (OTTS). This funding was mistakenly budgeted under Subscription rather than Dues in the FY 2007 allowance for OTTS.

Operating Budget Recommended Actions, continued

The PMI funding in OTTS covers the annual costs of project manager certifications, professional publications, and training opportunities offered through an internationally recognized standard for project managers. On-going PMI certification is consistent with the General Assembly's requirement for qualified and certified project managers for all Major IT Development Projects. For MDOT, these projects translate to $105 million over the FY 2005-2007 period.

5. Increase turnover expectancy to 3.2 percent requiring 10.7 vacant positions, a level more consistent with the current number of vacant positions (Page 20). $157,866 SF

<u>MDOT Response</u>: MDOT concurs with the DLS recommendation.

6. Reduce funds for contractual positions. This reduces funding to the fiscal 2005 actual expenditures (Page 20). $57,186 SF

<u>MDOT Response</u>: MDOT respectfully does not concur with the DLS recommendation.

Over the last four years, MDOT has lost 527 PINS in its workforce – a reduction of 6 percent since FY 2002. With the loss of these positions, MDOT has grown increasing reliant on contractual positions to provide basic services. TSO depends on contractual positions to cover a wide range of services, including building maintenance, mailroom and supply room operations, courier services, and management and organizational analysis.

A reduction of $57,186 will prevent TSO from providing a contractual position that would be responsible for conducting background investigations on candidates seeking employment with the Maryland Department of Transportation, as required by MDOT policy. The primary investigation will consist of criminal background checks, date of birth/identity verification, social security traces, and driving records (where appropriate). The position will use various secured databases in the research and retrieval of this information and will correspond with the requesting administration's human resources office about its findings. MDOT receives approximately 26,000 applications per year (Career Service positions only), of which approximately 535 candidates are given employment opportunities with the Department. Each of those appointments would require a background investigation before being offered a position.

Operating Budget Recommended Actions, continued

7. Delete three vacant PINs (010328, 008902, and 084368). Two positions are being considered for reclassification as part of the Governor's Initiative regarding environmental compliance. The second PIN has been vacant almost 4 years. Each of these PIN reductions are necessary due to the Department reprogramming $29.3 million in restricted funds that were not available prior to the end of fiscal 2006 (Page 20). $139,218 SF

MDOT Response: MDOT respectfully does not concur with the DLS recommendation.

Environmental Positions - Two of the vacant positions (010328 and 084368) are being reclassified for recruitment as Environmental Specialists. In September of 2005, Governor Ehrlich directed the Cabinet Secretaries to evaluate their agency's environmental compliance obligations; complete the implementation of a self-audit; document necessary follow-up actions to achieve compliance with all applicable environmental laws; and develop a written compliance plan by October of 2007. At MDOT, this process represents a significant ongoing effort, including the development of a compliance-based Environmental Management System (EMS) developed in accordance with U.S. Environmental Protection Agency (EPA) policy and based upon the protocols developed by the Maryland Department of Environment (MDE).

The positions at TSO will oversee the development of each modal EMS and coordinate the implementation of these programs. They will serve as experts regarding state, federal and local environmental requirements to ensure continuous MDOT compliance with applicable laws, regulations, and permits. The effort will also require the supervision of other environmental compliance professionals and possibly the assignment of these new personnel to the modal administrations, as needed.

MDOT is aggressively pursuing environmental management and compliance issues using process-oriented and systematic approaches across all transportation modes consistent with Governor Ehrlich's recommendations. Failure to fund these Environmental positions could compromise MDOT's ability to ensure compliance with federal, state and local environmental requirements and prevent potentially costly penalties and remedial costs associated with failure to comply with these environmental requirements. The State Highway Administration is currently addressing an underground storage tank related environmental issue in Harford County - an example of an environmental compliance issue that must be managed by MDOT.

Operating Budget Recommended Actions, continued

Information Technology (IT) Position - The third vacant position (008902) is being reclassified as an IT Budget Analyst within the Office of Finance. The PIN originally associated with this function was abolished as part of cost containment reductions. The six-year IT planning program that was the responsibility of this position has been temporarily delayed until the position can be replaced. This position serves as the focal point for verifying MDOT's budget information for the State's annual Information Technology Project Request (ITPR) submission and MDOT's Major IT Development Project Program. Since being assigned to the Office of Finance in 2005, the PIN has been part of a reorganization and is scheduled to be filled by the end of this fiscal year.

8. Add the following annual language to the special fund appropriation: (Page 20)

<u>, provided that no more than $4,119,526 of this appropriation may be expended for operating grants-in-aid, except for:</u>

(1) <u>any additional special funds necessary to match unanticipated federal fund attainments; or</u>

(2) <u>any proposed increase either to provide funds for a new grantee or to expand funds for an existing grantee; and</u>

(3) <u>the department provides notification to the budget committees to justify the need for additional expenditures due to either provision (1) or (2) above, and the committees provide review and comment or 45 days elapse from the date such notification is provided to the committees.</u>

<u>MDOT Response</u>: MDOT concurs with the DLS recommendation.

MDOT RESPONSE TO DLS ANALYSIS

Paygo Budget Recommended Actions

1. Concur with Governor's Allowance (Page 22).

MDOT Response: MDOT concurs with the DLS recommendation.